

114.3 CMR DIVISION OF HEALTH CARE FINANCE AND POLICY

114.3 CMR 9.00: INDEPENDENT LIVING SERVICES FOR THE PERSONAL CARE ATTENDANT PROGRAM

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9.01: General Provisions

- (1) Scope, Purpose and Effective Date. 114.3 CMR 9.00 governs the rates of payment to be used by all governmental units for the personal care attendant program. The rates for health care services set forth in 114.3 CMR 9.00 also apply to individuals covered by the Workers' Compensation Act, M.G.L.c.152. 114.3 CMR 9.00 shall be effective August 3, 2003.
- (2) Coverage. 114.3 CMR 9.00 and the rates of payment contained herein shall apply to personal care services provided by eligible providers to enable publicly-aided persons with permanent or chronic disabilities to live independently in the community. The rates of payment established under 114.3 CMR 9.00 are full compensation for services rendered, as well as for certain related administrative or supervisory duties rendered in the provision of services.
- (3) Disclaimer of Authorization of Services. 114.3 CMR 9.00 is not authorization for or approval of the procedures for which rates are determined pursuant to 114.3 CMR 9.00. Governmental units which purchase care are responsible for the definition, authorization, and approval of care and services extended to publicly aided members.
- (4) Coding Updates and Corrections. The Division may publish procedure code updates and corrections in the form of an Informational Bulletin. Updates may reference coding systems including but not limited to the *American Medical Association's Current Procedural Terminology* (CPT) and Healthcare Common Procedure Coding System (HCPCS) maintained by Centers for Medicare and Medicaid Services (CMS). The publication of such updates and corrections will list:
 - (a) codes for which only the code numbers change, with the corresponding cross references between existing and new codes;
 - (b) deleted codes for which there are no corresponding new codes; and
 - (c) codes for entirely new services that require pricing. The Division will list these codes and apply individual consideration (I.C.) reimbursement for these codes until appropriate rates can be developed.
- (5) Administrative Information Bulletins. The Division may issue administrative information bulletins to clarify its policy on and understanding of substantive provisions of 114.3 CMR 9.00.

9.02: Definitions

Meaning of Terms. Terms used in 114.3 CMR 9.00, unless stated otherwise, shall have the following meanings:

Activities of Daily Living (ADLs). Those specific activities described in 130 CMR 422.410(A) and the Contract for Personal Care Management (PCM) Services. Such activities performed by a PCA to physically assist a member to transfer, take medications, bathe or groom, dress and undress, engage in passive range of motion exercises, eat, and toilet.

Activity Form. The timesheet developed and distributed by the fiscal intermediary to the member for recording all PCA activity time for each pay period. The member or the member's surrogate submits the activity form to the fiscal intermediary.

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Activity Time. The actual amount of time spent by a PCA physically assisting the member with ADLs and IADLs. Activity time is reported on the activity form.

Consumer. A MassHealth Member who is receiving PCA services. The consumer is the employer of the PCA.

DMA Program Regulations. Regulations governing the MassHealth Personal Care Attendant Program are contained in 130 CMR 422.000 and 130 CMR 450.000.

Division. The Division of Health Care Finance and Policy established under M.G.L.c.118G, formerly the Rate Setting Commission.

Division of Medical Assistance (DMA). A Division of the Commonwealth of Massachusetts Executive Office of Health and Human Services that administers the MassHealth program pursuant to M.G.L. c. 118E and Title XIX of the Social Security Act and other applicable laws and waivers.

Evaluation. An initial determination by the personal care agency of the scope and type of personal care services to be provided to a member who meets the qualifications of 130 CMR 422.403. The evaluation is conducted by a registered nurse and an occupational therapist in accordance with 130 CMR 422.422(B) or 422.438(B).

Fiscal Intermediary. An entity contracting with DMA to perform employer-related tasks and related administrative tasks including, but not limited to, tasks described in 130 CMR 422.419(B).

Functional Skills Training. Instructional services provided by a personal care agency in accordance with 130CMR 422.421 to assist members who have obtained prior authorization for PCA services and their surrogates, if necessary, in developing the skills and resources to maximize the member's management of personal health care, personal care services, ADLs and activities related to the fiscal intermediary.

Governmental Unit. The Commonwealth of Massachusetts and any department, division, agency, board or political subdivision of the Commonwealth.

Holidays. January 1, July 4, Thanksgiving Day and December 25.

Instrumental Activities of Daily Living (IADLs). Those specific activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA such as meal preparation and clean-up, laundry, shopping, housekeeping; maintenance of medical equipment, transportation to medical providers and completion of paperwork required for the member to receive Personal Care Services.

Intake and Orientation Services. Services provided to a member who has been referred to a Personal Care Agency for such services and who has yet to obtain a prior authorization for PCA services. These services include, but are not limited to: determination of eligibility for PCA services; instruction and orientation in the rules, policies, and procedures of the PCA Program; instruction in the member's rights and responsibilities when using PCA services; and instructions in the role of the Personal Care Agency and Fiscal Intermediary, including the use of activity forms.

PCA Rates: The rates for PCA services set forth in 114.3 CMR 9.03 consist of two components: The employer expense component and the PCA wage component defined in 114.3 CMR 9.02.

- (a) PCA Rate. Rate of Payment for authorized activity time performed by the PCA.
- (b) Premium Pay Rate for Overtime. Rate of payment in addition to the regular PCA rate made to the PCA in excess of 40 hours per week (one hundred sixty 15-minute units) for one member subject to a PA from DMA.
- (c) Holiday Rate. Rate of Payment for authorized activity time performed by the PCA on Holidays between the hours of 6:00 A.M. and 12 Midnight.
- (d) Juror Service Rate. Payment for juror services performed by a PCA during regularly scheduled work hours are reimbursed at the PCA Rate up to a maximum of three days in accordance with 422.418(B).

PCA Employer Expense Component. The portion of the PCA class rate designated as reimbursement to

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members for their mandated employer's share of social security, federal and state unemployment taxes, Medicare, and worker's compensation insurance premiums.

PCA Premium Pay Rate for Overtime. The premium pay rate for overtime (X9806) is an extra payment paid to the PCA who has worked over 40 activity-time hours per week for one member and who is authorized by DMA to be paid premium pay in accordance with 422.418(A).

PCA Services. Physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the members evaluation and re-evaluation, service agreement and 130 CMR 422.410.

PCA Wage Component. The portion of the attendant class rate that is designated as the PCA's gross hourly wage.

Personal Care Agency. A public or private agency or entity under contract with DMA to provide PCM services to MassHealth eligible members in accordance with 130 CMR 422.000 and the PCM services contract.

Personal Care Attendant (PCA). A person who meets the requirements of 130 CMR 422.111(A)(1) and who is hired by a consumer or surrogate to provide PCA services.

Personal Care Management (PCM) Services. Services provided by a personal care agency to a member in accordance with a contract with DMA, including, but not limited to, those services identified in the PCM contract and 130 CMR 422.419(A). PCM services include intake and orientation and functional skills training.

Prior Authoization (PA). An approval, modification, deferral or denial for PCA Services to the Consumer by DMA in accordance with 130 CMR 422.416 and 422.418.

Publicly Aided Individual. A person who receives health care and services for which a governmental unit is in whole or in part liable under a statutory program of public assistance. This includes a consumer.

Re-Evaluation. A determination of the scope and type of PCA services provided to a Consumer who has requested a continuance of PCA services, because the current authorization is expiring. The Re-evaluation is conducted by a Registered Nurse and, if appropriate, an Occupational Therapist, in accordance with 130 CMR 422.422(C).

Service Agreement (previously known as the Personal Care Services Plan). A written plan of services, consistent with the requirements of 130 CMR 422.423 and the PCM services contract, that is developed jointly by the personal care agency, the member, and the member's surrogate, if any, which describes the responsibilities of the PCA, the member, the surrogate, the fiscal intermediary, and the personal care agency. If the member does not require a surrogate, the service agreement must state that the member is solely responsible for the management tasks, including hiring, firing, scheduling, training, supervising and otherwise directing the PCA. The service agreement must also describe the type and frequency of functional skills training that the member and the surrogate, if appropriate, requires from the personal care agency to manage the PCA Program successfully.

Transitional Living Services. A program of services in accordance with 130 CMR 422.431 through 422.441 that may be offered by a PCA agency in a structured group living environment for consumers who demonstrate an aptitude for independent living, but who may benefit from a supervised living community.

The Uniform Financial Statements and Independent Auditor's Report (UFR). An annual fiscal filing requirement of revenue and expense activity for programs funded fully or in part by contracts with the Commonwealth. Operational Services Division (OSD) under provisions of regulation 808 CMR 1.00 issues instructions for UFR preparation and compliance.

9.03: General Rate Provisions

- (1) Services Included in the Rate. The approved rate shall include payment for all care and services that are part of the Personal Care Attendant program under 130 CMR 422.401 through 422.423 subject only to the terms of

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the purchase agreement between the eligible provider and the purchasing governmental unit.

(2) Reimbursement as Full Payment.

- (a) Each eligible provider shall, as a condition of acceptance of payment made by the purchasing governmental unit for services rendered, accept the approved program rate as full payment and discharge of all obligations for services rendered. Any third party payments received on behalf of a publicly assisted consumer shall reduce, by that amount, the amount of the purchasing governmental unit's obligation for services rendered to the consumer.
- (b) The Employer Expense Component is intended to be treated by the Consumer, the Consumer's surrogate and/or the Fiscal Intermediary on the Consumer's behalf as a "pass through" for purposes of complying with state and federal laws. The Employer Expense Component shall be subject to review as determined by DMA and other governmental payers.

(3) Payment Limitation. Except as provided in 114.3 CMR 9.03(2), no purchasing governmental unit may pay less than, or more than, the approved program rate.

(4) Approved Program Rates. The rate of payment for authorized services shall be the rate listed below:

Code	Rate	Unit	Description
X9802	\$ 11.64	Hour	PCA Day/Evening Rate
X9805	\$ 11.64	Hour	PCA Night Rate
99456	\$177.63	Session	Evaluation
X9786	\$102.48	Session	Re-evaluation
X9790	\$ 47.76	Per Member / Per Month	Intake and Orientation. Initial request for prior authorization for PCA Services. This Code may be billed up to 3 consecutive months per member.
X9791	\$ 47.76	Per Member / Per Month	Functional Skills Training
T1019	\$ 2.91	15 minutes	PCA Rate
X9806	\$ 1.46	15 minutes	Premium Pay Rate for Overtime
X9783	\$ 17.46	Hour	Holiday Rate (includes base hourly rate)
99054	\$ 1.46	15 minutes	Premium Holiday Rate. Services requested on Sundays and holidays in addition to basic services. DMA does not pay for this code on Sundays. This code should be used for holidays only. Must be billed in addition to T1019.

(5) Explanation of Rates of Payment

Wage Component	PCA Rate (Hourly)	PCA Rate (15minutes)	Holiday Rate (Hourly)	Premium Holiday Rate and Premium Pay Rate for Overtime (15 minutes)
PCA Gross Wage Component	\$ 10.36	\$ 2.59	\$ 15.54	\$ 1.30

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Employer Expense Component	\$ 1.28	\$.32	\$ 1.92	\$.16
Total Class Rate	\$ 11.64	\$ 2.91	\$ 17.46	\$ 1.46

(6) Transitional Living Services. Rates for Transitional Living Services are approved under 114.5 CMR 4.00 Rates for Certain Social, Rehabilitation and Health Care Services.

9.04: Filing and Reporting Requirements

- (1) Reporting for Annual Review. Unless exempted by the Operational Services Division, each operating agency shall, on or before the 15th day of the fifth month after the end of its fiscal year, submit its Uniform Financial Statement and Independent Auditor's Report (UFR) to the Division of Purchase Services, Department of Administration and Finance, completed in accordance with electronic filing requirements.
- (a) If the Personal Care Agency is also a Fiscal Intermediary, the UFR filing must report as separate programs, the fiscal intermediary function and the remaining personal care services.
- (b) When an agency is exempted from filing its UFR by the Operational Services Division (OSD), the agency must send a copy of the letter of exemption from OSD to the Division to confirm its exemption with an explanation of reason(s) for its status.
- (2) General Provisions.
- (a) Accurate Data. All reports, schedules, additional information, books and records made available to the Division shall be certified under pains and penalties of perjury as true, correct and accurate by the Executive Director or Chief Financial Officer of the Operating Agency.
- (b) Examination of Records. Each Operating Agency shall make available all records relating to its operation and all records relating to a realty service or holding company or any entity in which there may be a common ownership or interrelated directorate upon request of the Division for examination.
- (c) Field Audits. The Division may conduct field audits. The Division will attempt to schedule an audit at a convenient time for both parties.
- (3). Non-Compliance. The Division may impose a penalty for failure by an eligible provider to submit accurate and timely information as requested in 114.3 CMR 9.04. The Division may reduce the rates for an amount of time equal to the period of non-compliance. The penalty shall accrue at a rate of 5% per month of non-compliance. The penalty shall not exceed a cumulative total of more than 50%. If a provider is not in full compliance upon completion of the filing of new rates, at no time can the new rates exceed the penalty-adjusted current rate. If the new rate were to exceed the penalty-adjusted current rate, the Division will delay the filing of the new rate until full-compliance with the filing requirements. If the new rate is less than the rate currently in effect, then the new rate will become effective immediately and potentially be subject to further penalty.

9.05: Severability

The provisions of 114.3 CMR 9.00 are severable. If any provision of 114.3 CMR 9.00 or the application of any provision to the personal care attendant program should be held invalid or unconstitutional, such determination shall not be construed to affect the validity or constitutionality of any other provision of 114.3 CMR 9.00 or the application of any other provision.

REGULATORY AUTHORITY

114.3 CMR 9.00: M.G.L. c. 118G.